

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of William M. and Brittany M.,

Claimants,

Vs.

REGIONAL CENTER OF ORANGE
COUNTY,

Respondent.

OAH Case Nos. L 2003060631
and L 2003060632

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on February 16, May 17 and 18, and August 2 and 3, 2005, in Santa Ana, California.

Claimant's mother represented Claimants William M. (W.M.) and Brittany M. (B.M.).

Mary Kavli, Fair Hearings and Mediation Coordinator represented Respondent Regional Center of Orange County (RCOC or Service Agency).

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Service Agency should fund parent vendored respite services for Claimants at the rate of 48 hours per month at the sibling rate.

FACTUAL FINDINGS

1. Claimants are twin Service Agency consumers who were born on June 27, 1996. They are eligible for Service Agency services on the basis of diagnoses of Autism. Claimants reside with their parents. Cognitive ability testing by the Newport Mesa Unified School District (District) in October 2003 placed both children in the high average range in verbal areas and in the average range in performance skills.

2. Claimant's parents and Service Agency representatives agreed on Individual Program Plans (IPPs or IPP, singular) for each Claimant after a conference on June 28, 2002. As pertinent to this proceeding, Service Agency agreed, in support of an "objective/plan" entitled "living option," to fund 24 hours per month of parent vendored respite at the sibling rate from July 7, 2002 to June 30, 2003. Service Agency agreed "to fund an additional 36 hours per month per mediation held 3/12/01; contract to end 10/31/02." The parties further agreed that Claimants' parents would act as caregivers, keep track of hours used, and submit necessary bills.

3. The following behaviors for W.M. were listed in the 2002 IPP: he attempts to leave situations by opening doors without permission; he has a tendency to move quickly and to bump into people and objects; he will argue, scream, yell, and throw books at his sister while riding in the car; he talks frequently about height, numbers, and death; he climbs objects; and, he does not respond to the first request. School records indicated there were no behavioral concerns at school. B.M. reportedly had similar behaviors, although to a lesser extent.

4. The parties thereafter entered into another mediation agreement, on October 21, 2002, wherein the respite hours were reduced to 48 per month. On May 29, 2003, RCOG declined Claimants' parents' requests to continue providing respite at the 48-hour level and offered to meet or to proceed to fair hearing or mediation.

5. On June 10, 2003, Claimants' parents filed fair hearing requests "to continue RCOG funding of parent vendored respite at 48 hours per month at the sibling rate (rolling) through 6/30/04."

6. The parties met on July 15, 2003 in an effort to reach agreement on new IPPs. They were unsuccessful and have yet to agree on new IPPs.

7. The parties have been unable to resolve their differences about the need for respite. Claimants' parents maintain that Claimants' behaviors and supervision needs are such that they continue to need the 48-hour level of respite. Service Agency, on the other hand, maintains that Claimants are high functioning children who do not present the challenges that would warrant the significant level of respite the parents seek. In fact, Service Agency has sought a full evaluation of Claimants in order to determine continued eligibility, or, alternatively, a behavioral assessment to determine the extent of the behavior problems. The parties have also been unable to agree on the need or terms of any further evaluation.

8. The children have been evaluated in connection with their educational needs. B.J. Freeman, Ph.D. (Freeman) evaluated the twins on May 20 and 21, 2004, "for assessment of [their] ability to function in a regular classroom setting." Dr. Freeman noted that W.M. has had some behavioral difficulties in the classroom, such as having difficulty sitting in his chair and attempting to interact with peers at inappropriate times, but concluded that he generally did very well. At home, however, Dr. Freeman noted that W.M. was extremely hyperactive, inattentive,

refused to follow commands, frequently shouted, and picked fights with B.M. Dr. Freeman made recommendations for both home and for school supports. Since W.M. appeared able to function in the classroom without the one-on-one aide, Dr. Freeman recommended fading out the aide and replacing her with a structured program. She recommended behavior intervention services to address behavior observed at home.

Dr. Freeman concluded B.M. also had differential behaviors at school and at home, characterizing those at school as “subtle social problems.” Dr. Freeman noted the following at-home behaviors in B.M.: she has difficulty remaining calm when problems arise; she does not complete chores on time; she does not control her temper when angry; she does not have good leadership skills; she has difficulty adjusting to different behavioral expectations across settings; and she has difficulty showing self-control. Dr. Freeman made similar recommendations for aide fade out and for behavior intervention services.

9. On November 3, 2004, Claimants’ parents and District entered into a mediation agreement regarding the children’s educational services. The parties agreed to place two psychologists, David Monkarsh, Ph.D. (Monkarsh), selected by Claimants’ parents, and Mary Jo Lange, Ph.D. (Lange), selected by District, to develop and implement a criterion-based program to fade out the school-based aides and reduce the home-based services, which were then at a level of 20 hours per week. District also agreed to fund speech and language, occupational, and vision therapy services.

10. Claimants attended a regular second grade classroom during the 2004-05 school year. Drs. Monkarsh and Lange observed Claimants in school and at home and made recommendations as required by the mediation agreement.

11. Dr. Monkarsh testified at the hearing. He stated the children are not cognitively delayed. He noted that both children display varying degrees of self-stimulatory behavior, inattentiveness, impulsivity, difficulty following direction, difficulty in transitions, and difficulty in social situations. He observed the behaviors were more pronounced at home and noted significant discrepancies between the reported observations of school personnel and those of Claimant’s parents. He made no recommendation regarding the level of respite.

12. Claimants’ parents presented no expert testimony regarding the appropriate level of respite. They did testify about the children’s behaviors and the time they must spend attending to their needs. Thus, Claimant’s mother testified that the children: engage in self-stimulatory behavior; engage in tantrums and shouting; spit at and hit others; “elope” unless they are constantly watched; climb over various surfaces at home and outside; and, are not careful as they cross streets or face other dangers in the community. She noted that the behaviors tend to escalate as they each react to what the other is doing. Claimant’s father, who works as an emergency physician and works long shifts of varying duration, echoed the same concerns and reported the same behaviors. He further stated that some behaviors have improved and some,

such as defiance and fighting, have worsened; he observed that if interested in something, such as video games or television programs, Claimants can behave properly for some time. Claimants' parents have also experienced personal challenges, primarily involving the care of elder parents, which have added to the stress of providing care and supervision to Claimants.

13. Service Agency clinical psychologist John Cone, Ph.D. (Cone), testified that based on the testimony of Claimant's mother and on the report of Dr. Freeman, the family was under sufficient stress to receive respite for 16 to 24 hours per month at the sibling rate.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code¹ section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Section 4501.)

2. Section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities" as "[s]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives"

Services and supports for persons with developmental disabilities include child care and respite care. (Section 4512, subd. (b)). "In-home respite services" are defined as "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member." (Section 4690.2, subd. (a)). These services are designed to assist family members in maintaining the client at home, to provide appropriate care and supervision to ensure the client's safety in the absence of family members, to relieve family members from the constantly demanding responsibility of caring for the client, and to attend to the client's basic self-help needs and other activities of daily living that would ordinarily be performed by family members. (Section 4690.2, subd. (a)).

3. In this case, the children present behaviors that require extra care and supervision in order to ensure their safety and retention in the family home. Respite care is therefore an appropriate service under sections 4215, subdivision (b), and 4690.2. Dr. Cone's testimony that 16 to 24 hours per month were appropriate in light of the reported problems at home was not directly or persuasively contradicted and is credited. Moreover, his testimony is consistent with the last agreed-upon level of 24 hours per month. Higher levels of respite have been agreed to by the parties, but only as a result of settlements for limited periods of time. The evidence presented

¹ All further references are to the Welfare and Institutions Code.

regarding Claimants' behaviors and the need to supervise them is insufficient to mandate a doubling of the agreed-to rate. Accordingly, the evidence establishes that 24 hours per month at the sibling rate is the appropriate level of respite care.

4. By reason of the foregoing, the appropriate level of respite care is 24 hours per month at the sibling rate and Service Agency need not fund a higher level.

ORDER

Claimant's appeal is denied.

Dated: _____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.